

Senate File 2271 - Introduced

SENATE FILE 2271

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A BILL FOR

1 An Act relating to the investment of certain public funds in
2 companies that are owned or controlled by Chinese military
3 or government services.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 12.8, subsection 1, Code 2022, is amended
2 to read as follows:

3 1. The treasurer of state shall invest or deposit, subject
4 to chapters 12F, 12H, and 12J, and 12K and as provided by law,
5 any of the public funds not currently needed for operating
6 expenses and shall do so upon receipt of monthly notice from
7 the director of the department of administrative services of
8 the amount not so needed. In the event of loss on redemption
9 or sale of securities invested as prescribed by law, and if
10 the transaction is reported to the executive council, neither
11 the treasurer nor director of the department of administrative
12 services is personally liable but the loss shall be charged
13 against the funds which would have received the profits or
14 interest of the investment and there is appropriated from the
15 funds the amount so required.

16 Sec. 2. NEW SECTION. 12K.1 Definitions.

17 As used in this chapter, unless the context otherwise
18 requires:

19 1. "*Company*" means any business or business entity that is
20 publicly traded and that is not based in the United States.

21 2. "*Direct holdings*" in a company means all securities of
22 a company held directly by the public fund or in an account or
23 fund in which the public fund owns all shares or interests.

24 3. "*Indirect holdings*" in a company means all securities
25 of a company held in an account or fund managed by one or more
26 persons not employed by the public fund, in which the public
27 fund owns shares or interests together with other investors not
28 subject to the provisions of this chapter. Indirect holdings
29 include but are not limited to mutual funds, fund of funds,
30 private equity funds, hedge funds, and real estate funds.

31 4. "*Prohibited company*" means a company that is owned or
32 controlled by Chinese military or government services and has
33 been designated by the United States government as a company
34 that citizens of the United States are restricted or prohibited
35 from entering into transactions with, including a designation

1 in any of the following lists:

2 *a.* The bureau of industry and security's entity list.

3 *b.* The bureau of industry and security's military end user
4 list.

5 *c.* The department of defense's communist Chinese military
6 companies list.

7 *d.* The office of foreign assets control's foreign sanctions
8 evaders list.

9 *e.* The office of foreign assets control's list of foreign
10 financial institutions subject to correspondent account or
11 payable-through account sanctions.

12 *f.* The office of foreign assets control's non-SDN Iran
13 sanctions list.

14 *g.* The office of foreign assets control's non-SDN
15 Palestinian legislative council list.

16 *h.* The office of foreign assets control's sectoral sanctions
17 identifications list.

18 *i.* The office of foreign assets control's specially
19 designated nationals and blocked persons list.

20 *j.* "*Public fund*" means the treasurer of state, the state
21 board of regents, the public safety peace officers' retirement
22 system created in chapter 97A, the Iowa public employees'
23 retirement system created in chapter 97B, the statewide fire
24 and police retirement system created in chapter 411, or the
25 judicial retirement system created in chapter 602.

26 Sec. 3. NEW SECTION. 12K.2 Identification of companies —
27 notice.

28 1. *a.* Within one hundred eighty days following the
29 effective date of this Act, a public fund shall identify or
30 have identified all prohibited companies in which the public
31 fund has direct or indirect holdings and shall create and make
32 available to the public a prohibited companies list for that
33 public fund. The public fund shall review and update, if
34 necessary, the prohibited companies list on a quarterly basis
35 thereafter.

1 *b.* In identifying or having identified prohibited companies,
2 the public fund may review and rely, in the best judgment of
3 the public fund, on publicly available information and other
4 information that may be provided by nonprofit organizations,
5 research firms, international organizations, and government
6 entities. The public fund may also contact asset managers
7 and institutional investors for the public fund to identify
8 prohibited companies based upon industry-recognized lists of
9 such companies that the public fund may have indirect holdings
10 in.

11 *c.* The Iowa public employees' retirement system, acting
12 on behalf of the system and other public funds subject to
13 this section, may develop and issue a request for proposals
14 for third-party services to complete the identification of
15 prohibited companies and the compilation of a prohibited
16 companies list. The request for proposals may request bids for
17 optional services related to this purpose, including but not
18 limited to provision of notice of such prohibited companies
19 as required in subsection 2. The Iowa public employees'
20 retirement system shall consult with all other public funds
21 regarding the development of the request for proposals, however
22 selection of a successful proposal and the final scope of
23 services to be provided shall be determined only by those
24 public funds that have agreed to utilize the third-party
25 services. If more than one public fund decides to utilize the
26 third-party services, the participating public funds shall
27 equally share the costs of such services.

28 2. For each company on the prohibited companies list in
29 which a public fund has direct or indirect holdings, the public
30 fund shall send or have sent a written notice informing the
31 company of the requirements of this chapter. The public fund
32 or its representative shall continue to provide such written
33 notice on an annual basis if the company remains a prohibited
34 company.

35 3. If a public fund determines that a company may be subject

1 to inclusion on the prohibited companies list, the public fund
2 shall scrutinize and engage the company for a period of not
3 more than twelve months and shall include the company on the
4 prohibited companies list if the public fund determines that
5 the company is a prohibited company.

6 Sec. 4. NEW SECTION. **12K.3 Divestment.**

7 1. A public fund shall not acquire any direct holdings in
8 publicly traded securities of a prohibited company.

9 2. *a.* A public fund shall sell, redeem, divest, or
10 withdraw all direct holdings in publicly traded securities of
11 a prohibited company no later than one hundred eighty days
12 following the date the company is included on the prohibited
13 companies list.

14 *b.* This subsection shall not be construed to require the
15 premature or otherwise imprudent sale, redemption, divestment,
16 or withdrawal of an investment, but such sale, redemption,
17 divestment, or withdrawal shall be completed as provided by
18 this subsection.

19 Sec. 5. NEW SECTION. **12K.4 Reports.**

20 1. Each public fund shall, within thirty days after the
21 prohibited companies list is created or updated as required by
22 section 12K.2, make the list available to the public.

23 2. On October 1, 2023, and each October 1 thereafter, each
24 public fund shall make available to the public, and file with
25 the general assembly, an annual report covering the prior
26 fiscal year that includes all of the following:

27 *a.* The prohibited companies list as of the end of the fiscal
28 year.

29 *b.* A summary of all written notices sent as required by
30 section 12K.2 during the fiscal year.

31 *c.* All investments sold, redeemed, divested, or withdrawn as
32 provided in section 12K.3 during the fiscal year.

33 *d.* A list of indirect holdings of the public fund in
34 publicly traded securities of prohibited companies and the
35 percentage of the total portfolio of the public fund the

1 indirect holdings of securities in prohibited companies
2 represent.

3 Sec. 6. NEW SECTION. **12K.5 Legal obligations.**

4 With respect to actions taken in compliance with this
5 chapter, including all good-faith determinations regarding
6 companies as required by this chapter, the public fund
7 shall be exempt from any conflicting statutory or common law
8 obligations, including any such obligations with respect to
9 choice of asset managers, investment funds, or investments for
10 the public fund's securities portfolios.

11 Sec. 7. NEW SECTION. **12K.6 Applicability.**

12 The requirements of sections 12K.2, 12K.3, and 12K.4 shall
13 not apply if the United States Congress or president of the
14 United States, through legislation or executive order, declares
15 that mandatory divestment of the type provided for in this
16 chapter interferes with the conduct of United States foreign
17 policy.

18 Sec. 8. Section 97A.7, subsection 1, Code 2022, is amended
19 to read as follows:

20 1. The board of trustees shall be the trustees of the
21 retirement fund created by [this chapter](#) as provided in section
22 97A.8 and shall have full power to invest and reinvest funds
23 subject to the terms, conditions, limitations, and restrictions
24 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
25 [12K](#) and subject to like terms, conditions, limitations, and
26 restrictions said trustees shall have full power to hold,
27 purchase, sell, assign, transfer, or dispose of any of the
28 securities and investments of the retirement fund which have
29 been invested, as well as of the proceeds of said investments
30 and any moneys belonging to the retirement fund. The board
31 of trustees may authorize the treasurer of state to exercise
32 any of the duties of [this section](#). When so authorized the
33 treasurer of state shall report any transactions to the board
34 of trustees at its next monthly meeting.

35 Sec. 9. Section 97B.4, subsection 5, Code 2022, is amended

1 to read as follows:

2 5. *Investments.* The system, through the chief investment
3 officer, shall invest, subject to chapters 12F, 12H, and 12J,
4 and 12K and in accordance with the investment policy and
5 goal statement established by the board, the portion of the
6 retirement fund which, in the judgment of the system, is not
7 needed for current payment of benefits under this chapter
8 subject to the requirements of section 97B.7A.

9 Sec. 10. Section 262.14, unnumbered paragraph 1, Code 2022,
10 is amended to read as follows:

11 The board may invest funds belonging to the institutions,
12 subject to chapters 12F, 12H, and 12J, and 12K and the
13 following regulations:

14 Sec. 11. Section 411.7, subsection 1, Code 2022, is amended
15 to read as follows:

16 1. The board of trustees is the trustee of the fire
17 and police retirement fund created in section 411.8 and
18 shall annually establish an investment policy to govern the
19 investment and reinvestment of the moneys in the fund, subject
20 to the terms, conditions, limitations, and restrictions
21 imposed by subsection 2 and chapters 12F, 12H, and 12J, and
22 12K. Subject to like terms, conditions, limitations, and
23 restrictions the system has full power to hold, purchase, sell,
24 assign, transfer, or dispose of any of the securities and
25 investments in which the fund has been invested, as well as of
26 the proceeds of the investments and any moneys belonging to the
27 fund.

28 Sec. 12. Section 602.9111, subsection 1, Code 2022, is
29 amended to read as follows:

30 1. So much of the judicial retirement fund as may not be
31 necessary to be kept on hand for the making of disbursements
32 under this article shall be invested by the treasurer of
33 state in any investments authorized for the Iowa public
34 employees' retirement system in section 97B.7A and subject to
35 the requirements of chapters 12F, 12H, and 12J, and 12K, and

1 the earnings therefrom shall be credited to the fund. The
2 treasurer of state may execute contracts and agreements with
3 investment advisors, consultants, and investment management and
4 benefit consultant firms in the administration of the judicial
5 retirement fund.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill relates to the investment of certain public funds
10 in companies that are owned or controlled by Chinese military
11 or government services.

12 The bill defines "company" as any business or business
13 entity that is publicly traded and that is not based in the
14 United States. The bill defines "direct holdings" in a company
15 as all securities of a company held directly by the public
16 fund or in an account or fund in which the public fund owns
17 all shares or interests. The bill defines "indirect holdings"
18 in a company as all securities of a company held in an account
19 or fund managed by one or more persons not employed by the
20 public fund, in which the public fund owns shares or interests
21 together with other investors not subject to the provisions
22 of this new Code chapter 12K. The bill defines "prohibited
23 company" as a company that is owned or controlled by Chinese
24 military or government services and designated by the United
25 States government as a company that citizens are restricted
26 or prohibited from entering into transactions with. The bill
27 defines "public fund" as the treasurer of state, the state
28 board of regents, the public safety peace officers' retirement
29 system, the Iowa public employees' retirement system (IPERS),
30 the statewide fire and police retirement system, or the
31 judicial retirement system.

32 The bill requires a public fund to identify all prohibited
33 companies in which the public fund has direct or indirect
34 holdings within 180 days following the effective date of
35 the bill. Additionally, the bill requires a public fund

1 to create and make available to the public a prohibited
2 companies list and review and update the list on a quarterly
3 basis. The bill authorizes a public fund to review and rely
4 on publicly available information and information from other
5 sources when identifying prohibited companies. The bill also
6 authorizes IPERS to develop and issue a request for proposals
7 for third-party services to complete the identification of
8 prohibited companies and the compilation of the prohibited
9 companies list. The bill requires a public fund to send notice
10 to all companies on the prohibited companies list on an annual
11 basis informing the company of the requirements of the new
12 Code chapter. The bill requires public funds to scrutinize
13 and engage with companies the fund identifies for possible
14 inclusion as a prohibited company for a period of not more than
15 12 months.

16 The bill prohibits a public fund from acquiring direct
17 holdings in publicly traded securities of a prohibited company.
18 The bill requires a public fund to sell, redeem, divest, or
19 withdraw all direct holdings in publicly traded securities of a
20 prohibited company no later than 180 days following the date
21 the company becomes a prohibited company.

22 The bill requires each public fund, within 30 days after the
23 prohibited companies list is created or updated, to make the
24 list available to the public. Additionally, the bill requires
25 a public fund to make available to the public and file with the
26 general assembly an annual report beginning October 1, 2023,
27 and each October 1 thereafter.

28 The bill provides that, with respect to actions taken
29 in compliance with the Code chapter, the public fund shall
30 be exempt from any conflicting statutory or common law
31 obligations, including any such obligations in respect to
32 choice of asset managers, investment funds, or investments for
33 the public fund's securities portfolios.

34 The bill provides that the provisions related to the
35 creation of a prohibited companies list, divestment of publicly

1 traded securities of a prohibited company, and reporting shall
2 not apply if the United States Congress or president of the
3 United States declares that mandatory divestment of the type
4 provided for in the Code chapter interferes with the conduct of
5 United States foreign policy.

6 The bill makes conforming changes to Code sections 12.8,
7 97A.7, 97B.4, 262.14, 411.7, and 602.9111.